

REMARKS

Reconsideration of the outstanding Office Action is respectfully solicited. The undersigned thanks the Examiner for confirming on November 14, 2003 that although found non-responsive, the AMENDMENTS of July 9 and July 31, 2003 are in fact "entered".

The claims herein are based on the original claims as follows-

Amended Claim	Pending Claim
19	1, 6
20	2
21	3
22	3 ("preferably-part")
23	4
24	4 ("preferably-part")
25	5
26	6

Amended Claim	Pending Claim
27	6 ("preferably-part")
28	7
29	8
30	9
31	10
32	11
33	12
34	13
35	15
36	12
37	12

Claims 1-16 have been renumbered as Claim 19 *et seq.* Claim 35 is based on prior Claim 15. Claims 36 and 37 are based on Claim 12.

Applicants German representatives have reviewed the Paper of October 21, 2003 and respectfully reiterate the traverse of the restriction requirement. For the purpose of responsiveness, Applicants provisionally elect the subject matter of Group I including Claims 1-13, which are present herein as new claims 14 *et seq.*

In Applicants' view, claim 17 and claim 18 cannot be classified as either independent or distinct; and search of one would require a search coextensive with the field of search for the other.

Applicants also traverse the statement in paragraph 4 of the Office Action, to the effect, "[A]s broadly claimed, the subcombination is not patentable." (April 10, 2003 Office Action, page 2, paragraph 4.) The Patent Office cannot simply hold a claim not patentable, in the absence of competent evidence; no such evidence is of record or has been applied against the claim.

Applicants respectfully traverse the rejection of the claims under 35 U.S.C. §112. The claims have been rewritten in view of the Examiner's criticisms at page 4 of the Office Action, lines 4, *et seq.*[4/10] and at page 2 *et seq.* of the October 21 Office Action.

In Claim 14, the word "green" has been explained in accordance with page 6 paragraph 12 of the specification ("unprocessed..."), which was one of the proposals advanced in the recent PTO Office Action. Claim 15 has been reworded to recite "at least one compound" is of the recited formulae (to eliminate reference to "substance(s)") and has been reworded at the end of the claim to recite "dry basis". Claim 16 has been amended similarly.

The Declaration of Isolde Wasley is attached hereto to explain the word "receptive"; this explanation is implicit in the specification at page 7, paragraph 14 as originally filed.

Claim 18 was amended to replace "with" by –comprising–, to emphasize a point. The terms "comprise" and "comprising" lend to an interpretation open to the inclusion of unrecited elements. Cf. MPEP Section 2111.03. Applicants have reviewed the PTO reliance on Section 2172.01 of the MANUAL OF PATENT EXAMINING PROCEDURE concerning the Examiner's allegation that there are "missing elements". In applicants' view, the PTO has provided no evidence that substantiates the premise that "elements are missing". In applicants' view, there is a great legal difference between "missing elements" and "unrecited elements". In applicants' view, claim 18 includes the elements of Claim 14. By virtue of Claim dependency claim 18 contains all the material elements of the generic invention. Cf. 35 U.S.C. 112, fourth paragraph second sentence. Accordingly, in applicants' view the grounds of rejection of Claim 18 was either moot and/or unripe.

With respect to Claim 19 the Examiner alleged, that the passive voice was used and questioned the requirement of sequence of steps. The method is recited as "comprising ..steps of" The "verb forms" thereafter, including "providing" and "diffusing" are gerunds; gerunds are verb forms, and those verb forms are used as nouns. If the "passive " voice referred to by the PTO has other application, applicants respectfully request notice. The requirement of the instant claims is that at least one of the energetic plasticizing agent and the polymeric desensitizing agent be used in the form of an emulsion.

Applicants turn to certain issues raised in the April 10 Office Action. With respect to the April 10 Office Action it is noted that revision, of Claims 2-4 and 6 [presented herein as Claims 19-24 to delete the terms, "particular", "in particular" and "preferably", overcomes the Examiner's criticisms of those terms for indefiniteness. Revision of Claim 5 [now Claim 25] is to reflect that the reagents diffuse into the grains of powder to certain depth(s); furthermore because of the dependency of Claim 26 [on Claim 19, neither of which refer to diffusion depth] the issue concerning diffusion depth is unripe, for the following reason: whereas previous Claim 6 depended from Claims 1-5, and claim 5 did in fact refer to diffusion depth, that is not the case with respect to the present slate of claims.

The issues on page 4—first **full** paragraph-- of the April 10 Office Action relate to indefinite/definite articles. Indefinite articles replace the definite article in the phrases "the receptive grain [claim 1, lines 3-4, now Claim 19]; claim 6, line 2 [now claim 19] "the high energy plasticizer" and a "diffusion depth"; Claim 6 lines 3-4 "untreated green powder" claim 7 line 2 "the reactor"; Claim 9 lines 4 [now Claim 30], the reactor tank", and line 6 "the remaining liquid components"; and claim 10 line 2, "the dried powder mass". In addition the Examiner criticized claim 3, for the recitation "the grain" alleging

that it is not clear if this refers to the Claims 1 line 4 "receptive grain" or the line 1 product "layered grain" . Moreover, the Examiner's attention is directed to Isolde Wasley's declaration relating to the definition of a German word which can be translated as "receptive" or "absorptive".

Further criticism [in the next full paragraph bridging pages 4-5 of April 10 Office Action] appears with respect to claim 1 insofar as "and/or" related to both plasticizer and deterrent. With respect to claim 1 line 4 objection was lodged with respect to "watery emulsion". That objection is overcome by language in Claim 19 "emulsion comprising water". In Claim 13 [now Claim 34] the molecular weight range is alleged to be improper and not understood (by the PTO). It is impossible to address this issue, since no reasons are advanced under statutory provisions.

In Claim 14 "reference to green powder is indefinite.."the language in Claim 14 has been expressly explained as "unprocessed" and is supported by application specification at page 6, five lines from the bottom of the page.

The Examiner objected to language in claim 14, specifically alleging the term "substance is used for different inconsistent possibilities" in lines 3 and 5. In response, the word "substance" has been replaced by --compound-- when "substance" embraces specific organic compounds.

The Examiner objected to language in e.g. claim 15, line 4 recitation relating to "10-60%". The language has been edited to state that the percent is on "dry basis".

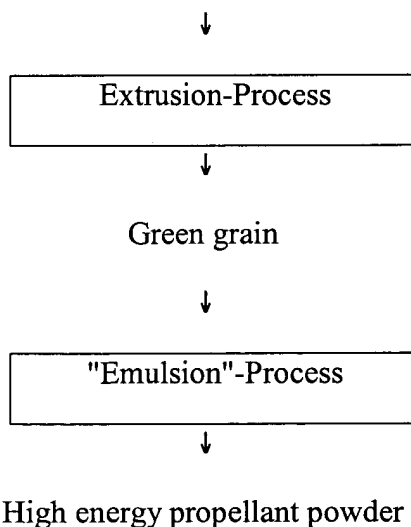
The Examiner objected to language in claim 16 lines 5 and 6, alleging the same problem with "substance" occurs again. This has been addressed in claim 16, as in claim 14.

The Examiner objected to language in claim 16 line 6, "is the substance in powder form or dough form". Whether the substances IV, V or VI are in powder form or dough form is not relevant. Claim 16 only requires the presence of these substances in the "power dough". In fact these substances have a crystalline form.

There appears to be a misunderstanding of the phrase "powder dough". The word "powder" in this connection does not directly relate to the physical consistency but to the utility. The "powder dough" is meant to indicate a (wet) mixture, i.e., a dough that is to be transformed into a green grain ("powder", e.g., "gun powder"). Claim 16 was amended to delete "powder" to narrow the issue. With respect to "powder dough", applicants advise as follows:

The following chart is illustrative:

Nitrocellulose dough containing IV, V or VI



To narrow the issue "powder dough" is replaced simply by "dough".

The Examiner objected to language in method claims for use of the passive voice. As explained above, the "steps" do not appear to be in the passive voice. Rather the steps of the method are individually expressed as gerunds.

The Examiner objected to language in claim 18, alleging Claim 18 omits essential elements. This is addressed above (MPEP 2111.03). The PTO has made to attempt to identify the alleged missing element.

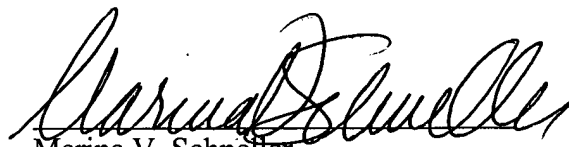
The Examiner objected to language in claim 17 what is "functional material"; the phrase has been amended.

The Examiner objected to language in claim 17 specifies a name e.g. "propellant for the same stuff from claim 14"---violates 112, 4th paragraph and is indefinite. In applicants view, the PTO has no ground of rejection or identifiable reason to make such a statement justification for a grounds of rejection. Applicants rely on MPEP §2111.03 which states that an open claim can read on unrecited elements; this presumes compliance with Section 112.

An early allowance is respectfully solicited.

Respectfully submitted,

Date: 



Marina V. Schneller
(Registration No. 26,032)
VENABLE, LLP
P.O. Box 34385
Washington, D.C. 20043-9998
Telephone: (202)344-4000
Telefax: (202) 962-8300

#499735